IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9530 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MUKTILAL AMRUTLAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9530 of 1999

MR IS SUPEHIA for Petitioner No. 1

MR. MENGDEY, AGP for Respondent No. 1-3

MR HS MUNSHAW for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 22/12/2003

ORAL JUDGEMENT

Heard learned advocate Mr. I.S.Supehia for petitioner, learned AGP Mr. Mengdey appearing on behalf

of respondent Nos. 1 & 3 and learned advocate Mr. H.S.Munshaw appearing on behalf of respondent No.2.

2. The brief facts are as under:

2.1 The petitioner was serving as a Primary Teacher and he retired from service on 30.9.2002. He was given benefit of selection grade w.e.f. 1.1.1973 and higher grade w.e.f. 1.6.1987 by order dated 18.1.1995. In or about the year 1998 the selection grade was cancelled by the respondent by letter dated 25.6.1999 and, therefore, order has been passed to recover the amount of Rs.12,678.30 Paise from the petitioner and directed to deposit the same in treasury. Thereafter his pension case has to be revised by the respondent. Learned advocate Mr. Supehia submitted that recently this Court has decided the said question in group of Misc. Civil Application No. 214 of 2003 in Special Civil Application No. 8871 of 1999 dated 24.11.2003 where this Court has held that a Teacher is entitled both selection grade and higher grade. Therefore, learned advocate Mr. Supehia submitted that the letter dated 25.6.1999 wherein demand has been made to deposit the amount in question with the treasury, the said amount has been deposited by the petitioner in treasury in pursuance to the above referred letter dated 25.6.1999. Therefore, Mr. Supehia submitted that the respondents may be directed to pay the said amount of Rs.12,678.30 Paise with 12% interest to the petitioner.

3. Learned advocate Mr. H.S.Munshaw appearing on behalf of respondent No.2 has submitted that the decision which has been relied upon by Mr. Supehia of this Court, the the petitioner may approach to the higher forum, therefore, till then this Court may wait and this Court may not to pass any order so that he can also file reply against the present petition.

4. In respect to the reply submitted by Mr. Munshaw it is a matter of 1999. In respect to the request made by Mr. Munshaw to file the detailed reply but according to my opinion it is not necessary as the same question has been examined by this Court and this Court has held that according to the Government Resolution dated 5.7.1991 a Teacher who retired prior to 1.8.1994 is entitled both the benefit of selection grade as well as higher grade also. Similar is the case of the present petitioner. He also retired prior to 1.8.1994 and received both the benefits as per Government Resolution dated 5.7.1991; selection grade as well as higher grade.

Therefore, this question already examined by this Court. If the department decides the appeal filed against the said order passed by this Court, same will decide the fete of this petition also. Obviously, the matter of 1999 cannot remain pending only on the ground which is canvassed by Mr. Munshaw. Therefore, according to my opinion, the recovery order which has been passed by the respondent No.2 dated 25.6.1999 is required to be quashed and set aside as petitioner is entitled both the benefit of selection grade and higher grade as per Government Resolution dated 5.7.1991. Therefore, present petition is allowed. Order dated 25.6.1999 is hereby quashed and set aside with a direction to the respondent No.2 to pay the amount of Rs.12,678.30 Paise to the petitioner with 12% interest within a period of six weeks from the date of receiving the copy of this order. Accordingly rule is made absolute. No order as to costs.

Direct service permitted.

(H.K.Rathod,J)

Jayanti*